### UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA

RICHARD GLOSSIP, Plaintiff-

District Court No. CIV-08-326-HE

Appellant,

Court of Appeals No.

v.

10-6244

**RANDALL WORKMAN**, Warden Oklahoma State Penitentiary

Defendant-Appellee.

## NOTE: THIS DESIGNATION FORM MUST BE COMPLETED AND FILED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE REVERSE SIDE OF THE FORM.

Those original papers which have been designated by circling their respective docket numbers (or dates of entry) on the attached copy of the district court's docket sheets should be included in the record on appeal prepared by the clerk of the district court and transmitted to the clerk of the court of appeals. (If the district court clerk so elects, original papers may be retained in the district court and copies thereof may be included in the record on appeal.)

The following items should also be included in the record on appeal. (Portions of transcripts should be designated by hearing dates and page numbers.)

- 1. The items circled on the attached copy of the district court's docket sheets.
- 2. All conventionally filed documents, Exhibit 7, Exhibit 17 (filed 11-03-2008)
- 3. All state court records, pleadings, briefs, exhibits, and transcripts from state court proceedings conventionally filed. (07/27/2009)
  - 4. Docket Sheet.
  - 5. Conventionally filed trial posters (7/21/2010)

Signature: s/s Mark Henricksen

Counsel for: Appellant

HENRICKSEN & HENRICKSEN LAWYERS, INC. 600 North Walker, Suite 220 Oklahoma City, Oklahoma 73102 (405) 609-1970 (405) 609-1973 (Fax) mark.henricksen@coxinet.net

#### **CERTIFICATE OF SERVICE**

I, MARK HENRICKSEN, attorney for Appellant/Petitioner, hereby certify that on October 29, 2010, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrant:

Seth Branham, Assistant Attorney General 313 NE 21<sup>st</sup> Street
Oklahoma City, Oklahoma 73105
<a href="mailto:fhc.docket@oag.state.ok.us">fhc.docket@oag.state.ok.us</a>
Counsel for Appellee/Respondent,

and filed with the clerk of the court of appeals on October 29, 2010.

Signature: /s/<u>Mark Henricksen</u>

Mark Henricksen

#### **INSTRUCTIONS**

If appellant is represented by court-appointed counsel, or is represented by retained counsel, but a co-defendant who appeals is represented by court-appointed counsel, appellant's counsel must designate the record on appeal by completing and filing this form with the clerk of the district court within 10 days after filing the notice of appeal. Copies must be served on all parties to the appeal and a copy must be filed with the clerk of the court of appeals. Within 10 days after service of appellant's designation, appellee may file and serve an additional designation. Copies of the district court docket sheets must be attached to every copy of the designation filed or served.

Although nonessential parts of the district court record should not be designated for inclusion in the record on appeal, it is counsel's responsibility to see that the record on appeal is

sufficient for consideration and determination of the issues on appeal, and the court is under no obligation to remedy any failure of counsel to fulfill that responsibility.

Every record on appeal must contain: 1) the last amended complaint and answer, or the indictment or information and any superseding indictment or information; 2) the final pretrial order (if any); 3) the district court's (and bankruptcy court's or magistrate's) pertinent findings and conclusions, opinions, or orders, and, if the findings and conclusions were stated orally, a copy of the transcript pages where they appear; 4) the final judgment or order from which the appeal is taken; 5) all jury instructions when an instruction is an issue on appeal, along with proposed instructions which were refused; 6) the notice of appeal; and 7) the district court docket sheets.

The following additional items should be included in the record on appeal under the circumstances indicated: 1) when an appeal is based upon a challenge to the admission or exclusion of evidence, the giving or failure to give a jury instruction, or any other ruling or order, a copy of the pages of reporter's transcript at which the evidence, offer of proof, instruction, ruling, or order and any necessary objection are reproduced; 2) copies of key trial exhibits if the appeal requires an analysis of those exhibits (exhibits withdrawn from the district court should not be designated, but may be included in an addendum to the party's appellate brief); 3) relevant portions of briefs, memoranda, affidavits and depositions filed in support of, or in opposition to, a substantive motion--such as a motion for summary judgment, motion to dismiss, or jurisdictional motion, when the appeal is from an order granting or denying the motion; 4) other items, including excerpts of transcripts, if expressly referred to in the brief and relevant to an issue raised on appeal.

Appellate Case: 10-6244 Document: 01018519802 Date Filed: 10/21/2010 Page: 1

APPEAL, CLOSED, PRISONER, PURCELL, \_JT

# U.S. District Court Western District of Oklahoma[LIVE] (Oklahoma City) CIVIL DOCKET FOR CASE #: 5:08-cv-00326-HE Internal Use Only

Glossip v. Sirmons Date Filed: 03/28/2008

Assigned to: Honorable Joe Heaton Date Terminated: 09/28/2010

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Jury Demand: None

Nature of Suit: 535 Death Penalty – Habeas

Corpus

Jurisdiction: Federal Question

**Petitioner** 

Richard Glossip

represented by Lanita Henricksen

Henricksen & Henricksen Lawyers Inc

600 N Walker Suite 220

Oklahoma City, OK 73102

405–609–1970 Fax: 405–609–1973

Email: <u>henricksen.lanita@coxinet.net</u> *ATTORNEY TO BE NOTICED* 

Mark L Henricksen

Henricksen & Henricksen Lawyers Inc

600 N Walker Suite 220

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405–609–1970 Fax: 405–609–1973

Email: <u>mark.henricksen@coxinet.net</u>

ATTORNEY TO BE NOTICED

V.

**Respondent** 

**Warden Marty Sirmons** 

represented by Seth S Branham

Attorney General's Ofc-OKC 313 NE 21st St

Oklahoma City, OK 73105

405–521–3921 Fax: 405–522–4534

Email: <a href="mailto:fhc.docket@oag.state.ok.us">fhc.docket@oag.state.ok.us</a>
<a href="mailto:ATTORNEY TO BE NOTICED">ATTORNEY TO BE NOTICED</a>

Date Filed	#	Page	Docket Text
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03/28/2008	1	MOTION to Appoint Counsel by Richard Glossip. (db, ) (Entered: 03/28/2008)
03/28/2008	2	MOTION for Leave to Proceed in forma pauperis by Richard Glossip. (db, ) (Entered: 03/28/2008)
03/28/2008	<u>3</u>	PREVIOUS Cases (db, ) (Entered: 03/28/2008)
03/31/2008	4	ORDER REFERRING CASE to Magistrate Judge Gary M. Purcell Signed by Honorable Joe Heaton on 3/31/08. (jw, ) (Entered: 03/31/2008)
04/03/2008	5	ORDER granting 1 Motion to Appoint Counsel Appointed Mark L Henricksen for Richard Glossip. Case management conf is set for 5/6/08 @11:00 a.m. Signed by Magistrate Judge Gary M. Purcell on 4/3/08. (dm) (Entered: 04/03/2008)
04/03/2008	<u>6</u>	ORDER: Case management/budget litigation conf set for 5/6/2008 11:00 AM in Courtroom #201 before Magistrate Judge Gary M. Purcell. Signed by Magistrate Judge Gary M. Purcell on 4/3/08. (dm) (Entered: 04/03/2008)
04/03/2008	7	ORDER establishing procedures of fed habeas death penalty case. Signed by Magistrate Judge Gary M. Purcell on 4/3/08. (dm) (Entered: 04/03/2008)
04/07/2008	8	ENTRY of Appearance by Seth S Branham on behalf of Marty Sirmons (Branham, Seth) (Entered: 04/07/2008)
05/01/2008	9	MOTION to Appoint Counsel ( <i>Co-Counsel</i> ) by Richard Glossip. Motions referred to Gary M. Purcell. (Henricksen, Mark) (Entered: 05/01/2008)
05/01/2008	10	ORDER granting 9 Motion to Appoint Co–Counsel Lanita Henricksen for Richard Glossip. Signed by Magistrate Judge Gary M. Purcell on 5/1/08. (dm) (Entered: 05/01/2008)
05/06/2008	11	ORDER denying 2 Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Gary M. Purcell on 5/6/08. (dm) (Entered: 05/06/2008)
05/06/2008	12	Minute Entry for cs managemnt conf proceedings held before Magistrate Judge Gary M. Purcell: Mark Henricksen apprs on bhf of Richard Glossip. Seth Branham apprs on bhf of Marty Sirmons. Cs managemnt conf held and ddls set (Ctrm 201, 11:00) (dm) (Entered: 05/06/2008)
05/06/2008	13	ORDER: Cs managemnt conf held &Ct made the following ords: Petition due 11/1/08; Mtns for lv to conduct disc due 11/1/08; Resp's resp due 60 days after filing of petition; Petitioner's rply to resp due 30 days after filing of resp; Respondent shall transmit state ct record. This Ord disp of all issues ref to the undersigned. Signed by Magistrate Judge Gary M. Purcell on 5/6/08. (dm) (Entered: 05/06/2008)
05/06/2008		Judge Gary M. Purcell no longer assigned to case. (dm) (Entered: 05/06/2008)
05/06/2008	14	ENTRY of Appearance by Mark L Henricksen on behalf of Richard Glossip (Henricksen, Mark) (Entered: 05/06/2008)
05/07/2008	<u>15</u>	ENTRY of Appearance by Lanita Henricksen on behalf of Richard Glossip (Henricksen, Lanita) (Entered: 05/07/2008)
05/09/2008	<u>16</u>	Receipt for Money Received from Richard Glossip in the amount of \$5.00, receipt number 127610 regarding 1 MOTION to Appoint Counsel (pw, )

		(Entered: 05/09/2008)
07/25/2008	17	CJA 30: Authorization to Pay M Henricksen in Death Penalty Proceedings Voucher # 080725000001. Signed by Honorable Joe Heaton on 7/23/08. (dm) (Entered: 07/25/2008)
08/22/2008	18	MOTION for Leave <i>to Permit Discovery</i> by Richard Glossip. (Henricksen, Mark) (Entered: 08/22/2008)
08/28/2008	19	RESPONSE in Opposition re 18 MOTION for Leave <i>to Permit Discovery</i> filed by Marty Sirmons. (Branham, Seth) (Entered: 08/28/2008)
09/24/2008	20	ORDER denying 18 Motion to Permit Discovery. Signed by Honorable Joe Heaton on 9/24/08. (jw, ) (Entered: 09/24/2008)
10/21/2008	21	MOTION to Seal by Richard Glossip. (Henricksen, Mark) (Entered: 10/21/2008)
10/21/2008	22	ORDER granting <u>21</u> Motion to Seal Evaluation. Signed by Honorable Joe Heaton on 10/21/08. (jw, ) (Entered: 10/21/2008)
11/03/2008	23	NOTICE of Conventional Filing <i>of Attachment 7</i> by Mark L Henricksen on behalf of Richard Glossip (Henricksen, Mark) (Entered: 11/03/2008)
11/03/2008	24	NOTICE of Conventional Filing of Attachment 17 by Mark L Henricksen on behalf of Richard Glossip (Henricksen, Mark) (Entered: 11/03/2008)
11/03/2008	25	PETITION for Writ of Habeas Corpus (Death Penalty), filed by Richard Glossip.(Henricksen, Mark) (Entered: 11/03/2008)
11/03/2008	26	APPENDIX re <u>25</u> Petition for Writ of Habeas Corpus (Death Penalty) by Richard Glossip. (Attachments: # <u>1</u> Attachment 1–Oklahoma Court of Criminal Appeals Opinion Denying Post–Conviction Relief, # <u>2</u> Attachment 2–OCCA Direct Appeal Opinion, # <u>3</u> Attachment 3–United States Supreme Court denial of certiorari, # <u>4</u> Attachment 4–Judgment &Sentence, # <u>5</u> Attachment 5–The Death Warrant, # <u>6</u> Attachment 6–State's Exhibits 73 and 65, # <u>7</u> Attachment 7–Psychiatric Evaluation by Edith King, Ph.D., # <u>8</u> Attachment 8–Affidavit of Christopher Evangelista, # <u>9</u> Attachment 9–Affidavit of Steve Leedy, # <u>10</u> Attachment 10–Affidavit of Sherry Britton, # <u>11</u> Attachment 11–Affidavit of Anna Rose Wilson, # <u>12</u> Attachment 12–Affidavit of Sara Bonnell, # <u>13</u> Attachment 13–Affidavit of Krystal Willis, # <u>14</u> Attachment 14–Affidavit of Donald Stamman, # <u>15</u> Attachment 15–Affidavit of Latricia Deselle, # <u>16</u> Attachment 16–Affidavit of Jolene Perham, RE Financial Records, # <u>17</u> Attachment 17–Affidavit of Jolene Perham, RE Videotape, # <u>18</u> Attachment 18–Affidavit of Jolene Perham, RE Transcript)(Henricksen, Mark) (Entered: 11/03/2008)
11/03/2008	27	SECOND MOTION for Discovery by Richard Glossip. (Henricksen, Mark) (Entered: 11/03/2008)
11/03/2008	28	SEALED EXHIBIT 7 Psychiatric Evaluation by petitioner Richard Glossip.(Re: 26 Appendix,,,, )to Petition for a Writ of Habeas Corpus(pw, ) (Entered: 11/04/2008)
11/03/2008	29	SEALED EXHIBIT 17 Video Tape by petitioner Richard Glossip.(Re: <u>24</u> Notice of Conventional Filing, <u>26</u> Appendix,,,, )to Petiton for Writ of Habeas Corpus(pw, ) (Entered: 11/04/2008)

11/07/2008		Docket Annotation: Received Courtesy Copies of Documents <u>25</u> Petition for a Writ of Habeas Corpus and <u>26</u> Appendix to Petition for a Writ of Habeas Corpus (pw, ) (Entered: 11/13/2008)
11/21/2008	30	MOTION for Extension of Time to File Response/Reply as to <u>27</u> SECOND MOTION for Discovery by Marty Sirmons. (Branham, Seth) (Entered: 11/21/2008)
11/24/2008	31	ORDER granting 30 Motion for Extension of Time to File Response/Reply re 27 SECOND MOTION for Discovery Responses due by 11/26/2008. Signed by Honorable Joe Heaton on 11/24/08. (jw, ) (Entered: 11/24/2008)
11/26/2008	32	RESPONSE in Opposition re <u>27</u> SECOND MOTION for Discovery filed by Marty Sirmons. (Attachments: # <u>1</u> Exhibit A (part 1) Brief of Appellant, # <u>2</u> Exhibit A (part 2) Brief of Appellant, # <u>3</u> Exhibit B – Application for Evidentiary Hearing on Sixth Amendment Claims, # <u>4</u> Exhibit C – Reply Brief of Appellant, # <u>5</u> Exhibit D – Brief of Appellee, # <u>6</u> Exhibit E – Supplemental Authority after Oral Argument, # <u>7</u> Exhibit F – Petition for Rehearing and Motion to Stay Mandate, # <u>8</u> Exhibit G – Order Denying Petition for Rehearing, # <u>9</u> Exhibit H – Unpublished opinion)(Branham, Seth) (Entered: 11/26/2008)
12/12/2008	33	MOTION to Seal Document by Richard Glossip. (Henricksen, Mark) (Entered: 12/12/2008)
12/16/2008	34	ORDER re 35 Ex Parte Application for Order Nunc Pro Tunc Signed by Honorable Joe Heaton on 12/16/08. (jw, ) Modified text on 12/16/2008 (jw, ). (Entered: 12/16/2008)
12/16/2008	<u>35</u>	SEALED MOTION by Richard Glossip.(jw, ) (Entered: 12/16/2008)
12/16/2008	<u>36</u>	SEALED MOTION by Richard Glossip.(jw, ) (Entered: 12/16/2008)
12/16/2008		Docket Annotation: [Doc. #36] filed in error (jw, ) (Entered: 12/16/2008)
12/16/2008	37	ORDER re 33 MOTION to Seal Document filed by Richard Glossip. Signed by Honorable Joe Heaton on 12/16/08. (jw, ) (Entered: 12/16/2008)
12/22/2008	38	CJA 30: Authorization to Pay M Henricksen in Death Penalty Proceedings Voucher # 081222000012. Signed by Honorable Joe Heaton on 12/16/08. (dm) (Entered: 12/24/2008)
12/22/2008	39	CJA 30: Authorization to Pay L Henricksen in Death Penalty Proceedings Voucher # 081222000014. Signed by Honorable Joe Heaton on 12/16/08. (dm) (Entered: 12/24/2008)
12/30/2008	40	MOTION for Extension of Time to File Response/Reply as to <u>25</u> Petition for Writ of Habeas Corpus (Death Penalty) by Marty Sirmons. (Branham, Seth) (Entered: 12/30/2008)
12/30/2008	41	ORDER granting 40 Motion for Extension of Time to File Reply to petitioner's habeas corpus petition; Replies due: by 1/20/2009. Signed by Honorable Joe Heaton on 12/30/2008. (lam) (Entered: 12/30/2008)
12/31/2008	42	MOTION for Hearing <i>Evidentiary</i> by Richard Glossip. (Henricksen, Mark) (Entered: 12/31/2008)
01/20/2009	43	

		ANSWER to Complaint <i>Petition for Writ of Habeas Corpus</i> by Marty Sirmons.(Branham, Seth) (Entered: 01/20/2009)
01/20/2009	44	RESPONSE to Motion re <u>42</u> MOTION for Hearing <i>Evidentiary</i> filed by Marty Sirmons. (Branham, Seth) (Entered: 01/20/2009)
02/17/2009	45	MOTION for Extension of Time to File Response/Reply as to <u>43</u> Answer to Complaint / Disclaimer by Richard Glossip. (Henricksen, Mark) (Entered: 02/17/2009)
02/17/2009	46	ORDER granting <u>45</u> Motion for Extension of Time to File Reply to Petition for Writ of Habeas Corpus Replies due by 3/2/2009. Signed by Honorable Joe Heaton on 2/17/09. (jw, ) (Entered: 02/17/2009)
03/02/2009	47	REPLY by Petitioner Richard Glossip re <u>43</u> Answer to Complaint / Disclaimer filed by Richard Glossip. (Henricksen, Mark) (Entered: 03/02/2009)
04/22/2009	48	CJA 30: Authorization to Pay M Henricksen in Death Penalty Proceedings Voucher # 090420000012. Signed by Honorable Joe Heaton on 4/13/09. (dm) (Entered: 04/22/2009)
04/22/2009	49	CJA 30: Authorization to Pay L Henricksen in Death Penalty Proceedings Voucher # 090420000013. Signed by Honorable Joe Heaton on 4/13/09. (dm) (Entered: 04/22/2009)
07/27/2009	50	STATE COURT RECORDS RECEIVED – CONVENTIONAL FILING by Marty Sirmons. (pw, ) (Entered: 07/27/2009)
04/15/2010	51	ORDER; Petitioner is directed to file under seal a complete copy of Attachment 18 to the Appendix to his habeas petition, as more fully set out. Signed by Honorable Joe Heaton on 4/15/10. (jw, ) (Entered: 04/15/2010)
04/21/2010	52	SEALED EXHIBIT by Richard Glossip.(Attachment 18 to: <u>26</u> Appendix )(ap, ) (Entered: 04/21/2010)
05/26/2010	53	ORDER granting <u>27</u> Motion for Discovery, respondent is directed to produce the posters for inspection and copying within 15 days, as more fully set out. Signed by Honorable Joe Heaton on 5/26/10. (jw, ) (Entered: 05/26/2010)
07/14/2010	54	MOTION to Supplement <i>Record with Conventional Filing</i> by Richard Glossip. (Henricksen, Mark) (Entered: 07/14/2010)
07/15/2010	55	ORDER granting <u>54</u> Motion to Supplement the Record. Signed by Honorable Joe Heaton on 7/15/10. (jw, ) (Entered: 07/15/2010)
07/21/2010	56	NOTICE of Conventional Filing by Mark L Henricksen on behalf of Richard Glossip (Henricksen, Mark) (Entered: 07/21/2010)
08/12/2010	57	ORDERbased on production of trial posters petitioner may file a supplemental brief to his habeas petition as to Ground III within seven (7) days not to exceed (5) five pages in length; if, a supplemental brief is filed respondent may file his response within five (5) days not to exceed five (5) pages in length. Signed by Honorable Joe Heaton on 08/12/2010. (lam) (Entered: 08/12/2010)
08/19/2010	58	BRIEF IN SUPPORT re <u>25</u> Petition for Writ of Habeas Corpus (Death Penalty) Supplemental Brief on Ground III by Richard Glossip. (Henricksen, Mark) (Entered: 08/19/2010)

08/24/2010	<u>59</u>		BRIEF IN SUPPORT Supplemental Brief of Respondent on Ground III by Marty Sirmons. (Attachments: # <u>1</u> Exhibit 1 – Affidavit of Connie Smotherman)(Branham, Seth) (Entered: 08/24/2010)
08/24/2010	60		MOTION to Supplement <i>Expand the Record</i> by Marty Sirmons. (Branham, Seth) (Entered: 08/24/2010)
08/24/2010	61		ORDER directing petitioner to respond to <u>60</u> respondent's motion to expand the record by 08/31/2010. Signed by Honorable Joe Heaton on 08/24/2010. (lam) (Entered: 08/24/2010)
08/31/2010	<u>62</u>		OBJECTIONS re <u>60</u> MOTION to Supplement <i>Expand the Record</i> filed by Richard Glossip. (Attachments: # <u>1</u> Affidavit Affidavit of Wayne Woodyard, # <u>2</u> Affidavit Affidavit of Steve Leedy)(Henricksen, Mark) (Entered: 08/31/2010)
09/28/2010	63		ORDER granting <u>60</u> respondent's motion to supplement record. See order for specifics. Signed by Honorable Joe Heaton on 09/28/2010. (lam) (Entered: 09/28/2010)
09/28/2010	64	7	ORDER denying <u>42</u> petitioner's motion for evidentiary hearing; and denying <u>25</u> petitioner's grounds for relief, his petition for writ of habeas corpus. See order for specifics. Signed by Honorable Joe Heaton on 09/28/2010. (lam) (Entered: 09/28/2010)
09/28/2010	65	101	JUDGMENT entered upon consideration of the petition for writ of habeas corpus, responses, all other pertinent and supplemental pleadings, and state court record as expanded in accordance with order <u>64</u> ; petition for writ of habeas corpus is DENIED. Signed by Honorable Joe Heaton on 09/28/2010. (lam) (Entered: 09/28/2010)
09/29/2010	66		ORDER granting petitioner a certificate of appealability as to the specified subpart of gound one, ground three, ground four, the specific subpart of ground five and ground six and denies certificate of appealability as to the remaining grounds or parts of grounds for relief. See order for further specifics. Signed by Honorable Joe Heaton on 09/29/2010. (lam) (Entered: 09/29/2010)
10/20/2010	67	102	NOTICE OF APPEAL as to <u>64</u> Order on Motion for Hearing by Richard Glossip. (Henricksen, Mark) (Entered: 10/20/2010)
10/20/2010	68		TRANSCRIPT Order Form by Richard Glossip re <u>67</u> Notice of Appeal that transcripts are not necessary. See order form for dates and proceedings. (Henricksen, Mark) (Entered: 10/20/2010)
10/20/2010	69		CJA 30: Authorization to Pay Henricksen in Death Penalty Proceedings Voucher # 101020000005. Signed by Honorable Joe Heaton on 10/14/10 (dab ) (Entered: 10/20/2010)
10/20/2010	70		CJA 30: Authorization to Pay Henricksen in Death Penalty Proceedings Voucher # 101018000001. Signed by Honorable Joe Heaton on 10/14/10(dab ) (Entered: 10/20/2010)
10/21/2010	71		PRELIMINARY RECORD LETTER – Electronic Transmission of Notice of Appeal with Preliminary Record sent to Tenth Circuit Court of Appeals re 67 Notice of Appeal (pw, ) (Entered: 10/21/2010)